

**UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA**

Shawn Canada,

Case No. 21-cv-2389 (WMW/HB)

Plaintiff,

v.

REPORT AND RECOMMENDATION

Paul Schnell, Chad Mitch, Kristie Lang,
Alex Bunger, Robyn Wood, Mathias
Antony,

Defendants.

HILDY BOWBEER, United States Magistrate Judge

In an order dated November 23, 2021, this Court informed Plaintiff Shawn Canada that to proceed with this lawsuit he would need to file an amended complaint to address deficiencies in his initial pleading. (Order [ECF No. 6].) Specifically, Canada's complaint combined requests for civil relief and habeas corpus relief—two types of relief that cannot be joined in a single proceeding. *See e.g. Spencer v. Haynes*, 774 F.3d 467, 469-71 (8th Cir. 2014) (a district court should seek the consent from a litigant before choosing to construe a pleading as a habeas or civil action). This Court asked Canada to clarify for the Court which claims, if any, he would like to pursue. Canada was given 21 days to file an amended pleading, failing which his case would be dismissed without prejudice. *See Fed. R. Civ. P. Rule 41(b)*. That deadline has now passed, and Canada has not filed an amended pleading or otherwise communicated with the Court. This Court now recommends that Canada's case be dismissed for failure to prosecute because

he did not file a timely amended complaint and his original pleading was flawed as outlined in the November 23, 2021 Order. *See Henderson v. Renaissance Grand Hotel*, 267 Fed. App'x 496, 497 (8th Cir. 2008) (per curiam) (“A district court has discretion to dismiss an action under Rule 41(b) for a plaintiff’s failure to prosecute, or to comply with the Federal Rules of Civil Procedure or any court order.”).

RECOMMENDATION

Based upon the foregoing, and on all of the files, records, and proceedings herein,
IT IS HEREBY RECOMMENDED THAT:

1. This action be **DISMISSED WITHOUT PREJUDICE** under Fed. R. Civ. P. 41(b) for failure to comply with this Court’s November 23, 2021 Order.
2. Canada’s Motion to Proceed In Forma Pauperis [ECF No. 2] and his Motion for a Jury Trial [ECF No. 4] be **DENIED** as moot.

Dated: January 7, 2022

s/Hildy Bowbeer

HILDY BOWBEER

United States District Judge

NOTICE

Filing Objections: This Report and Recommendation is not an order or judgment of the District Court and is therefore not appealable directly to the Eighth Circuit Court of Appeals.

Under Local Rule 72.2(b)(1), “a party may file and serve specific written objections to a magistrate judge’s proposed finding and recommendations within 14 days after being served a copy” of the Report and Recommendation. A party may respond to those objections within 14 days after being served a copy of the objections. *See* Local Rule 72.2(b)(2). All objections and responses must comply with the word or line limits set forth in Local Rule 72.2(c).